IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 588 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALLARAKHU LALUMIYA ZARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 588 of 2002

MR NN PRAJAPATI for Petitioner No. 1

MS CHETNABEN JOSHI for Petitioner No. 1

MR PR ABICHANDANI, APP for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/03/2003

ORAL JUDGEMENT

The present petition has been filed by the petitioner against the order of rejection dated 25-7-2002

passed by the learned Addl. City Sessions Judge, Navsari, in Criminal Revision Application No.62 of 2001 whereby the order dated 7-9-2001 passed by the learned Judicial Magistrate (First Class), Navsari, in the application preferred by the petitioner under Sec.451 of the Code of Criminal Procedure for obtaining interim custody of the vehicle in question bearing GT-6-U-7411 seized by the concerned Officer of the Navsari Rural Police Station in connection with C.R.No.II-102 of 2001 of Navsari Taluka Police Station for the offences punishable under Sec.11(1)(3) read with Secs.5 and 8 and of Animal Cruelty Act was confirmed.

2. Heard learned counsel for the respective parties.

3. Learned counsel for the petitioner has submitted that the petitioner is the owner of the vehicle in question; his vehicle is lying in the police station unattended since last 15 months and if the interim custody of the vehicle is not handed over to him, the same will become junk by passage of time. In support of his submissions, learned counsel for the petitioner has placed reliance on a decision of the Apex court rendered in Special Leave Petition (Cri.) No.2745 of 2002 dated 1-10-2002 and submitted that the orders passed by the Courts below are required to be quashed and set aside and necessary orders for handing over the custody of the vehicle in question to the petitioner on appropriate terms and conditions are required to be passed.

4. Having heard the learned counsel for the respective parties and considering the evidence on record, it is clear that the petitioner is the owner of the vehicle in question and his vehicle is lying in the police station unattended since last 15 months.

6. It is obvious that even at the end of trial, the vehicle in question cannot be either kept by the authorities or confiscated to the State as the offence is under the Prevention of Cruelty to Animals Act wherein Sec.11 read with Sec.12 provides only for disposal of animals affected by the Act.

Merely because the vehicle is used, it cannot be kept either by the police authorities or by the Magistrate as muddamal and on the conclusion of the trial, the vehicle has to be returned to the owner of the vehicle.

In the application for interim custody of vehicle, the trial court should pass appropriate orders

as contemplated under Sec.451 of the Code of Criminal Procedure at the earliest.

7. In view of the aforesaid decision of the Apex Court, the order dated 7-9-2001 passed by the learned J.M.F.C., Navsari and order dated 25-7-2002 passed by the learned Addl. City Sessions Judge, Navsari in Criminal Revision Appln. No.62 of 2001 cannot be sustained and hence the same are required to be quashed and set aside.

8. Thus, the petition is allowed. Both the orders of the courts below are hereby quashed. The application for return of muddamal is granted. The concerned Officer of the Navsari Rural Police Station-II is hereby directed to hand over the custody of the vehicle bearing registration No.GT-6-U-7411 seized in connection with C.R.No.II-102 of 2001 of Navsari Rural Police Station to the petitioner after due verification. However, the petitioner shall furnish solvent surety of Rs.1.00 lacs (Rupees One Lac only) with personal bond of the like amount with a condition that as and when required, the vehicle shall be produced before the trial court and shall not be either transferred, disposed or dealt with in any manner without the permission of the trial court and the owner shall see that the vehicle in question shall not be utilized for any purpose other than purely legal and covered by the permit issued under the Motor vehicle Act pertaining to transport of goods. The petitioner is directed to file undertaking to that effect before the trial Court.

9. In view of the aforesaid decision of the Apex Court, since it is of no use keeping such seized vehicle at the police station for a long period, the learned Magistrate shall pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicle, if required at any point of time. This can be done pending hearing of application for return of such vehicle.

10. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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